STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of C. M. KALUHIOKALANI, Minor.

UNPUBLISHED
October 15, 2013

No. 314174
Clinton Circuit Court
Family Division
LC No. 11-023325-NA

Before: SERVITTO, P.J., and WHITBECK and OWENS, JJ.

PER CURIAM.

Respondent-mother, M. Kaluhiokalani, appeals as of right the trial court's order terminating her parental rights to her minor child under MCL 712A.19b(3)(c)(*i*), (g), and (j). We affirm.

I. FACTS

A. BACKGROUND FACTS

The child is 16 years old and suffers from cognitive impairments and type-1 diabetes. In April 2011, the Department of Human Services (the Department) received a complaint that the child's blood sugar levels were fluctuating and that Kaluhiokalani failed to take her to several medical appointments. Meegan Cullen, the child's foster-care supervisor, testified that the Department began providing Kaluhiokalani services.

In October 2011, a school nurse reported that the child was pale and tired, had a blood sugar level of 69 mg/dl, and had to be stabilized. Toni Fabus, the child protective services worker, testified that a normal blood sugar level for the child would be around 120 mg/dl. Julie Dunneback, the child's nurse, testified that a standard blood sugar level for a child her age would be between 80 and 180 mg/dl. The child's medical documentation indicated that her blood sugar levels ranged from 296 mg/dl to 567 mg/dl from late April to late May 2011, her blood sugar levels at times exceeded 400 mg/dl or fell as low as 68 mg/dl in August 2011, and the child had a blood sugar level of 51 mg/dl on September 11, 2011.

Kaluhiokalani admitted that she failed to take the child to doctor and counseling appointments, that she allowed contact between the child and the child's grandmother despite a no-contact order, that the child's blood sugar level was at 47 mg/dl on October 19, 2011, and that the child's blood sugar level was at 69 mg/dl on October 25, 2011. The Department took the child into protective custody and the trial court placed her in a foster home.

In April 2012, Jennifer Marlette, the child's foster care worker, testified that Kaluhiokalani had trouble bringing appropriate snacks to parenting time and failed to consistently monitor the child's blood sugar levels. In July 2012, Marlette testified that Kaluhiokalani blamed the child and the Department for the child's illness and did not understand how severe it was. Marlette testified that the child's diabetes was "pretty well" controlled in foster care and that all of her blood sugar fluctuations were addressed. In September 2012, the Department petitioned the trial court to terminate Kaluhiokalani's parental rights.

B. TERMINATION PROCEEDINGS

At the termination hearing, Dunneback testified that the child requires constant supervision and monitoring to control her diabetes. She testified that the child missed medical appointments frequently while under Kaluhiokalani's care. Dunneback testified that the child is unable to calculate her insulin dosage or properly log her blood sugar levels. Carla Palmer, the child's school nurse, testified that the child's blood sugar levels were out of control. Palmer testified that the child had been placed in a "life or death situation" in October 2011 because of her low blood sugar. Dunneback explained that low blood sugar can cause immediate death, and that prolonged low blood sugar levels can progress to diabetic ketoacidosis, which leads to death.

Kaluhiokalani denied that the child's blood sugar levels ever fell as low as 40 mg/dl and denied that the child was pale and tired because of low blood sugar. She testified that the child was used to having blood sugar as low as 70 mg/dl. Kaluhiokalani testified that the child's blood sugar level fluctuations are normal because she is active.

Palmer testified that Kaluhiokalani told her that the child was capable of controlling her diabetes on her own, but she could not actually do so. Anna Walton, Kaluhiokalani's counselor, testified that Kaluhiokalani was unable to understand the child's illness and lacked motivation to treat it. Emily Darling-Funk, the child's counselor, testified that Kaluhiokalani cannot provide the level of supervision that the child requires. Nancy Bateson, a family friend, testified that Kaluhiokalani frequently directed the child to check her blood sugar and guided the child in picking healthy foods.

Kaluhiokalani testified that she had learned how to read the child's blood sugar levels, administer and dose insulin, and calculate the child's carbohydrate intake at the Cincinnati Children's Hospital in 2001. She testified that the doctors at the Cincinnati Children's Hospital gave her a simple formula to calculate the child's needs. Kaluhiokalani testified that, after moving to Michigan, the doctors at Sparrow Hospital wanted the child on a more difficult and complex treatment plan. Kaluhiokalani testified that she did not understand Sparrow Hospital's treatment plan and did not believe that it worked.

Darling-Funk testified that Kaluhiokalani exposed the child to unhealthy relationships. She testified that despite the no-contact order between the child and her grandmother, Kaluhiokalani continued to leave the child unsupervised with her grandmother.

Dunneback testified that now that the child was in foster care, she regularly attended her medical appointments and her condition was improved. Palmer testified that the child no longer

has extremely high or extremely low blood sugar levels. Kaluhiokalani denied that the child's diabetes had improved since she was in foster care.

Walton testified that she had observed visits between Kaluhiokalani and the child and they did not have a strong bond; Kaluhiokalani seemed distant and unresponsive. Cullen testified that Kaluhiokalani and the child appeared to lack a bond. Darling-Funk testified that Kaluhiokalani and the child have a bond and that Kaluhiokalani sincerely attempted to monitor the child's diabetes. Bateson testified that Kaluhiokalani and the child have a bond and that Kaluhiokalani is a good parent. Kaluhiokalani testified that she and the child love each other and communicate well. The child's guardian ad litem informed the court that the child wanted to be returned to Kaluhiokalani's care.

C. THE TRIAL COURT'S FINDINGS AND CONCLUSIONS

The trial court found that Kaluhiokalani exposed the child to relationships that put her at a substantial risk of harm. It also found that the child could not supervise her own diabetes and on at least one occasion, the child's blood sugar was dangerously low. It found that Kaluhiokalani did not understand the child's medical needs and could not supervise her properly. It found that the child was at the risk of immediate death or prolonged health problems if her blood sugar was not controlled.

The trial court found that Kaluhiokalani did not agree with Sparrow Hospital's plan for the child's needs. It found that the child's blood sugar levels have been more stable since it placed her in foster care and she began following Sparrow Hospital's plan. It found that Kaluhiokalani had not made progress, blamed others for her problems, and did not understand why the child had been removed from her care. The trial court found that clear and convincing evidence supported terminating Kaluhiokalani's parental rights.

The trial court also found that termination of Kaluhiokalani's parental rights was in the child's best interests. It found that the child did not have the cognitive ability to take care of her own medical needs and that it was unclear whether she ever would be able to do so. It found that the child needed a reliable support system and a consistent diet, but Kaluhiokalani denied that the child had special needs and she was unable to provide for them.

II. STATUTORY GROUNDS

A. STANDARD OF REVIEW

This Court reviews for clear error the trial court's factual findings and ultimate determinations on the statutory grounds for termination.[1] The trial court's factual findings are

[1] MCR 3.977(K); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

clearly erroneous if the evidence supports them, but we are definitely and firmly convinced that it made a mistake.[2]

B. LEGAL STANDARDS

The burden is on the Department to prove at least one of the statutory grounds supporting termination by clear and convincing evidence.[3] A parent must demonstrate that he or she can meet his or her child's basic needs once the child is under the trial court's jurisdiction.[4]

C. APPLYING THE STANDARDS

1. MCL 712A.19b(3)(c)(*i*)

Kaluhiokalani contends that the trial court clearly erred when it found that the conditions that led to the adjudication continued to exist. We disagree.

MCL 712A.19b(3)(c)(*i*) provides that the trial court may terminate a parent's rights if

> [t]he conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

Here, one of the conditions that led to the adjudication was Kaluhiokalani's mismanagement of the child's diabetes. Dunneback testified that the child's diabetes would require lifetime, constant monitoring. Between when the Department began providing services in April 2011 and when the trial court removed the child from Kaluhiokalani's care in October 2011, the child frequently missed medical appointments. The child did not miss medical appointments while in foster care. The child's blood sugar levels fluctuated widely while the child was in Kaluhiokalani's care, but they improved after the child was placed in foster care. We conclude that the trial court did not clearly err when it found that the conditions that led to the adjudication continued to exist.

Further, we conclude that the trial court did not clearly err by finding that there was no reasonable likelihood that Kaluhiokalani could rectify these conditions within a reasonable time. Multiple witnesses testified that Kaluhiokalani did not or could not understand the nature and severity of the child's illness. Kaluhiokalani testified that she did not understand Sparrow Hospital's plan for managing the child's diabetes and that she did not think that it worked. At the termination hearing, Kaluhiokalani denied medical facts that she previously admitted, including that child's blood sugar had fallen to 47 mg/dl at one point. Given Kaluhiokalani's

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[2] *In re Jenks*, 281 Mich App 514, 517; 760 NW2d 297 (2008).

[3] MCL 712A.19b(3); *In re Trejo Minors*, 462 Mich 341, 355; 612 NW2d 407 (2000).

[4] *In re Terry*, 240 Mich App 14, 28; 610 NW2d 563 (2000).

continued denial of the child's medical problem, the trial court did not clearly err by determining that she would be unable to rectify the medical neglect within a reasonable time.

2. MCL 712A.19b(3)(g)

MCL 712A.19b(3)(g) provides that the trial court may terminate a parent's rights if

> [t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

Kaluhiokalani contends that the trial court clearly erred because it ignored her testimony and ignored Bateson's testimony that Kaluhiokalani was a good parent who provided for the needs of her child. We defer to the special ability of the trial court to judge the credibility of witnesses.[5] Given the extensive testimony that Kaluhiokalani was unable to provide proper care for the child's medical needs, we conclude that the trial court did not clearly err by accepting other witnesses' testimonies over those of Kaluhiokalani and Bateson.

Kaluhiokalani also contends that, because of the child's age, she could have rectified her medical neglect within a reasonable time. The child is 16 years old, but witnesses testified that she is cognitively impaired and functions at a lower level than her age. Dunneback testified that the child was incapable of controlling her own diabetes because she lacked the math skills to do so. Darling-Funk testified that the child continued to require supervision. Therefore, the trial court's determination that the child's age did not favor Kaluhiokalani was not clearly erroneous.

3. MCL 712A.19b(3)(j)

MCL 712A.19b(3)(j) provides that the trial court may terminate parental rights if

> [t]here is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

Palmer testified that the child's blood sugar level in October 2011 was a "life or death situation." Dunneback explained that low blood sugar can cause immediate death and prolonged levels of low blood sugar can progress to diabetic ketoacidosis and death. As discussed previously, there was extensive testimony that Kaluhiokalani was unable to understand the child's illness or properly supervise it. Because Kaluhiokalani lacked the capacity to manage her child's life-threatening medical condition, the trial court did not clearly err by finding that there was a reasonable likelihood that the child would be harmed if returned to her home.

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[5] MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

III. THE CHILD'S BEST INTERESTS

A. STANDARD OF REVIEW

The trial court must order the parent's rights terminated if the Department has established a statutory ground for termination by clear and convincing evidence and it finds that termination is in the child's best interests.[6] We review for clear error the trial court's determination regarding the child's best interests.[7]

B. LEGAL STANDARDS

To determine whether termination of a parent's parental rights is in a child's best interests, the court should consider a wide variety of factors that may include "the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home."[8]

C. APPLYING THE STANDARDS

Kaluhiokalani contends that the trial court clearly erred by finding that terminating her parental rights was in the child's best interests. We disagree.

Kaluhiokalani primarily focuses on the evidence of the bond between her and the child, but the trial court did not find that she and the child failed to share a bond. It instead focused on the child's needs, Kaluhiokalani's deficient parenting abilities, and the advantages of a foster home over her home. We are not definitely and firmly convinced that its findings were mistaken. Particularly, while there was testimony that the child was struggling socially in the foster home, there was also testimony that the child's dangerous medical condition improved while she was in foster care.

Kaluhiokalani also asserts that the trial court failed to take the child's wishes into account. We disagree.

MCL 712A.19a(3) requires the trial court to ascertain the child's views about his or her permanency plan. Here, the trial court ascertained that the child did not want it to terminate Kaluhiokalani's parental rights, and it acknowledged that it would consider her preference. The statute does not provide that the child's preferences override his or her best interests. We conclude that the trial court complied with MCL 712A.19a(3).

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[6] MCL 712A.19b(5); *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012).

[7] MCR 3.977(K); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

[8] *In re Olive/Metts*, 297 Mich App at 41-42 (internal quotations omitted).

IV. CONCLUSION

We conclude that the trial court did not clearly err by finding that the Department established MCL 712A.19b(3)(c)(*i*), (g), and (j). We also conclude that the trial court did not clearly err when it determined that terminating Kaluhiokalani's parental rights was in the child's best interests.

We affirm.

/s/ Deborah A. Servitto
/s/ William C. Whitbeck
/s/ Donald S. Owens